

**Pt. 3503**

United States, any state thereof, or the District of Columbia, and which are under the effective control of United States nationals or permanent residents.

*Head of Independent Unit* means an official appointed by the Administrator to direct and manage one of the Administrator's staff offices.

*Head of the Contracting Activity* (HCA) means the General Services Director and the Engineering and Construction Director.

*Implementing Agreement* means the Agreement in Implementation of Article III of the Panama Canal Treaty (TIAS 10031), signed at Washington, DC on September 7, 1977.

*Inspector General* means the Office of the Inspector General.

*Procurement Executive* means an individual designated as the senior procurement executive pursuant to 41 U.S.C. 414(3), by the Administrator from members of his staff. The Procurement Executive is delegated agency-wide responsibility to oversee development of procurement systems, establish procurement policy, evaluate procurement system performance in accordance with approved criteria, carry out specific responsibilities as assigned in this PAR, enhance career management of the procurement work force, and certify to the Administrator that procurement systems meet approved criteria.

*Treaty* means the Panama Canal Treaty (TIAS 10030), signed at Washington, DC on September 7, 1977.

[55 FR 7638, Mar. 2, 1990]

**PART 3503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

Sec.

3503.000 Scope of part.

**Subpart 3503.1—Safeguards**

3503.101 Standards of conduct.

3503.101-3 Agency regulations.

3503.103 Independent pricing.

3503.103-2 Evaluating the certification.

**48 CFR Ch. 35 (10-1-99 Edition)**

**Subpart 3503.2—Contractor Gratuities to Government Personnel**

3503.203 Reporting suspected violations of the Gratuities clause.

3503.204 Treatment of violations.

**Subpart 3503.3—Reports of Suspected Antitrust Violations**

3503.301 General.

**Subpart 3503.4—Contingent Fees**

3503.408 Evaluation of the SF 119.

3503.408-1 Responsibilities.

3503.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

**Subpart 3503.5—Other Improper Business Practices**

3503.502 Subcontractor kickbacks.

3503.502-2 General.

**Subpart 3503.6—Contracts With Government Employees or Organizations Owned or Controlled by Them**

3503.600-70 Scope of subpart.

3503.600-71 Definitions.

3503.601 Policy.

3503.602 Exceptions.

3503.603 Responsibilities of the contracting officer.

3503.670 Exclusions.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7638, Mar. 2, 1990, unless otherwise noted.

**3503.000 Scope of part.**

This part implements FAR part 3, cites Commission regulations on employee responsibilities and conduct, establishes responsibility for reporting violations and related actions, and provides for authorization of exceptions to policy.

**Subpart 3503.1—Safeguards**

**3503.101 Standards of conduct.**

**3503.101-3 Agency regulations.**

Commission regulations on Employee Responsibilities and Conduct are contained in the Commission's "Employee Code of Conduct". All personnel involved in acquisition actions shall become familiar with the statutory and

## **Panama Canal Commission**

regulatory prohibitions governing employee conduct. Any problems or questions concerning standards of conduct shall be referred to the Designated Agency Ethics Official.

### **3503.103 Independent pricing.**

#### **3503.103-2 Evaluating the certification.**

(b)(3) Whenever an offer is rejected under FAR 3.103-2, or the Certificate of Independent Price Determination is suspected of being false, the contracting officer shall report the situation to the General Counsel through the cognizant Head of the Contracting Activity for referral to the Attorney General in accordance with FAR 3.303.

## **Subpart 3503.2—Contractor Gratuities to Government Personnel**

### **3503.203 Reporting suspected violations of the Gratuities clause.**

Any Commission employee who suspects that a violation of the Gratuities clause has occurred shall immediately report the suspected violation to the cognizant Head of the Contracting Activity. Upon being notified of the suspected violation, the HCA shall inform the Designated Agency Ethics Official and the Procurement Executive, by written memorandum, of the pertinent details of the suspected violation.

### **3503.204 Treatment of violations.**

(b) When the HCA determines that there is probable cause to believe that a violation of the Gratuities clause has been committed, the case shall be handled as provided in the Commission debarment and suspension procedures in subpart 3509.4.

(c) The final decision as to which remedies the Commission may pursue if a violation of the Gratuities clause is found by the Debarment Committee (see 3509.406-3(b)), is reserved to the Administrator.

## **Subpart 3503.3—Reports of Suspected Antitrust Violations**

### **3503.301 General.**

(b) The contracting officer shall report any suspected violations of antitrust laws to the General Counsel

## **3503.600–70**

through the cognizant Head of the Contracting Activity for referral to the Attorney General and the Commission's Debarment Committee in accordance with FAR subpart 3.3.

## **Subpart 3503.4—Contingent Fees**

### **3503.408 Evaluation of the SF 119.**

#### **3503.408-1 Responsibilities.**

(b) The contracting officer's documentation of the evaluation of the Standard Form 119, Statement of Contingent or Other Fees, conclusions, and any proposed actions shall be reviewed by the cognizant Head of the Contracting Activity in coordination with the General Counsel.

### **3503.409 Misrepresentations or violations of the Covenant Against Contingent Fees.**

(a) Commission personnel who suspect or have evidence of attempted or actual exercise of improper influence, misrepresentations, or violations of the Covenant Against Contingent Fees shall report the matter promptly to the Designated Agency Ethics Official and the cognizant Head of the Contracting Activity.

## **Subpart 3503.5—Other Improper Business Practices**

### **3503.502 Subcontractor kickbacks.**

#### **3503.502-2 General.**

Any Commission employee who suspects that a violation of the Anti-Kickback Act has occurred shall immediately report the suspected violation to the Designated Agency Ethics Official and the cognizant Head of the Contracting Activity. Suspected violations shall be treated in accordance with the debarment and suspension procedures at subpart 3509.4.

## **Subpart 3503.6—Contracts With Government Employees or Organizations Owned or Controlled by Them**

### **3503.600–70 Scope of subpart.**

This subpart implements and supplements FAR subpart 3.6 and sets forth

Commission policy and procedures for identifying and dealing with conflicts of interest and improper influence or favoritism in connection with contracts involving current or former Commission employees. This subpart does not apply to agreements with other departments or agencies of the Federal Government.

#### **3503.600-71 Definitions.**

*Commission employee* means:

(a) Any officer or employee of the Panama Canal Commission who is employed or appointed, with or without compensation, to serve more than 130 days during any period of 365 consecutive days, or

(b) Any officer or employee of the Commission who is retained, designated, appointed or employed to perform, with or without compensation, temporary duties either on a full-time or intermittent basis for not more than 130 days during any period of 365 consecutive days and who actually served more than 60 days during such 365-day period.

#### **3503.601 Policy.**

Except as authorized at 3503.602 or excluded at 3503.670, no contract shall be awarded without competition to a—

(a) Former Commission employee (or to a business concern or other organization owned or substantially owned or controlled by a former Commission employee) whose employment terminated within 365 calendar days before submission of an offer to the Commission; or

(b) Prospective contractor which employs, or proposes to employ, a current Commission employee or a former Commission employee whose employment terminated within 365 calendar days before submission of an offer to the Commission, if either of the following conditions exist:

(1) The current or former Commission employee is or was involved in developing or negotiating the offer for the prospective contractor.

(2) The current or former Commission employee will be involved directly or indirectly in the management, administration, or performance of the contract.

#### **3503.602 Exceptions.**

(a) The Director, Office of Executive Administration in his capacity as the Designated Agency Ethics Official may authorize an exception, in writing, to the policy in FAR 3.601 and 3503.601 for the reasons stated in FAR 3.602, if the exception would not involve a violation of 18 U.S.C. 203, 18 U.S.C. 205, 18 U.S.C. 207, 18 U.S.C. 208, section 27 of the Office of Federal Procurement Policy Act, or Commission regulations in the "Employee Code of Conduct". The Director, Office of Executive Administration shall consult with the cognizant Bureau or Staff Director who originated the request and with the General Counsel before authorizing any exceptions.

(b) This subpart does not apply to subcontracts, that is, agreements to undertake part of the work as an independent contractor. However, where subcontracts essentially create an "employer-employee" relationship between the Commission and the subcontractors, the subpart shall apply. In determining whether such a relationship exists, the contracting officer shall generally be guided by the standards of Chapter 304, Subchapter 1-4 of the "Federal Personnel Manual" in distinguishing between employees and independent contractors.

#### **3503.603 Responsibilities of the contracting officer.**

Before awarding a contract, the contracting officer shall obtain an authorization under 3503.602 for any of the reasons stated in FAR 3.603.

#### **3503.670 Exclusions.**

Former or current Commission employees who participated personally and substantially in the conduct of any Commission procurement of supplies or services, including those who were responsible for reviewing and approving the award, modification, or extension of any contract for such procurement, are excluded from the 365 calendar day "before submission of an offer" time period specified in 3503.601 (a) and (b). Instead, the time period for such employees shall be two years after the last date the employee participated personally and substantially in the

## Panama Canal Commission

3504.903

conduct of any Commission procurement of supplies or services, or personally reviewed and approved the award, modification, or extension of any contract for such procurement. This two-year prohibition applies irrespective of whether the contract being sought is on a competitive or noncompetitive basis.

### **PART 3504—ADMINISTRATIVE MATTERS**

#### **Subpart 3504.6—Contract Reporting**

Sec.

3504.602 Federal Procurement Data System.

3504.903 Procedures.

AUTHORITY: 40 U.S.C. 486(c).

#### **Subpart 3504.6—Contract Reporting**

##### **3504.602 Federal Procurement Data System.**

(b) As indicated in the FPDS Reporting Manual, the Commission is exempt from the reporting requirements of the Federal Procurement Data System, except for the procurement data that is required to be provided in accordance with Public Law 96-39 (Trade Agreements Act of 1979) as prescribed by OFPP Policy Letter 80-8 (as amended).

[55 FR 7640, Mar. 2, 1990]

##### **3504.903 Procedures.**

The Commission will report the information required under FAR 4.902(b) directly to the IRS.

[55 FR 7640, Mar. 2, 1990]